

From: Beverly Slagle <bslagle@coastalfcu.org> on 02/18/2004 05:11:00 PM
Subject: Availability of Funds and Collection of Checks

-----Forwarded by Beverly Slagle/Exec/CFCU on 02/18/2004 04:59PM -----

Subject: Comments on Proposed Rule-Check 21 Implementation

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Background

Recently, the Federal Reserve Board (Board) published a proposed rule to amend Regulation CC and its commentary to implement the Check Clearing for the 21st Century Act (Check 21), which was enacted into law on October 28, 2003 and becomes effective on October 28, 2004. The purpose of Check 21 is to facilitate the broader use of electronic check processing without mandating that any financial institution change its current check collection practice.

Institution Comment

Coastal Federal Credit Union, Raleigh, N.C. (\$1.3 Byn. Assets/124,600 members) respectfully submits the following constructive comment in response to NAFCU's "Issues to Consider" section based on review of NAFCU's Summary Comments (pp.13-22) and Federal Register/Volume 69, No.5, Thursday, January 8, 2004. (pp.23-54).

A. Check 21 Changes-Addition of Subpart D

1. We agree that if an item that purports to be, but is not, a substitute check, that item has warranty and indemnity rights; and where applicable, recredit and consumer awareness disclosure rights under subpart D as though the item were a substitute check. It is our belief that the consumer must be protected throughout the entire process for it to have credibility.
2. When a second charge results from an ACH debit that was created using information from an original or substitute check, Coastal takes the position that the payment request should be covered by warranties under &229.52(a). The consumer must be protected from "harm" in situations where they did not make the choice to convert their item from a check to a substitute check, much less an ACH debit. All ACH items should be covered by the original warranties they apply to the original item.
3. Under proposed &229.54(b)(3), Coastal supports "adjustments", made by the Board, which deviate from Check 21 regarding the required time period calculations for when a financial institution requires an expedited credit request from a consumer to be in writing. The "time expansion" revolves around "banking day". Some financial institutions are open on Saturday. We need to require that the consumer request be in writing which would also allow them to be submitted electronically.
4. We agree with the Board's proposed reorganization of the statutory provisions concerning "action on claims" under &229.54(c) primarily because the order of the provisions has no material effect on the

ruling.

5. We support the Board's proposal under &229.54(c)(4), which states that if, after providing a recredit, the financial institution later determines that the customer's claim is not valid, the financial institution would be allowed to reerse the amount it previously recredited plus any interest paid on the amount. This is particularly important since Check 21 does not explicitly address the reversal of interest when reversing a credit. We do not believe that consumers should be "unjustly enriched" which could lead to false claims and unnecessary burden to financial institutions.

6. Because financial institutions are accustomed to these similar situations and consumer recredit requirements, we do not believe that additional commentary to &229.54 concerning expedited recredit procedures for consumers would be useful or helpful.

7. The Board offers two(2) "alternative rule provisions" under proposed &229.57(b)(2) as to when a financial institution must provide the required disclosure to a consumer who requests a copy of a check. We strongly support "Alternative 2" which provides that a financial institution which sends a substitute check in lieu of the original check must give disclosure at the time the substitute check is provided rather than the alternative which provides the substitute check at the time the consumer requests the check. Since Check 21 will likely be somewhat confusing to the consumer, we see no need to create an issue until the consumer actually has to deal with a substitute check.

8. Based on our review, we believe that the proposed model language in Form C-5A of Appendix C regarding consumer awareness disclosure for substitute checks is clear, accurate, and concise.

9. While the proposed model forms C-22 through C-25 of Appendix C do not provide a "statutory safe harbor", we believe the model language provided by the Board will be useful to our credit union.

B. Check 21 Changes to Existing Sections in Regulation CC

10. Our credit union agrees with the commentary to the substitute check definition in proposed &229.2(zz) which describes the various ways in which the MICR line of a substitute check can vary from the MICR line of the original check. With the exception of the "position 44" change, the remainder is essentially standard check processing.

11. Our credit union generally agrees with the changes to the indorsement and identification standards proposed in && 229.35(a), 229.38(d), and Appendix D. Based on our years of dealing with checks and indorsements, we are somewhat doubtful that all indorsements will be properly placed such that they are legible.

12. At this point, it is somewhat difficult for us to determine whether our credit union would benefit if Regulation CC provided returning banks with the flexibility to indorse on the front of the checks and include additional information with their indorsements. It may well be very beneficial to have such flexibility. However, these checks have the potential to be so "marked up" with indorsements that they, in turn, become illegible. As a result, we're somewhat reluctant to strongly support many indorsements to the front of a check until we see these proposed changes in practice.

C. Additional Comments to regulation CC(Not Related to Check 21)

13. We are in agreement with the proposed amendments to existing Regulation CC and commentary that are not related to the implementation of Check 21.

14. Our credit union DOES believe that there is at least one additional area of the existing rule and commentary which should be clarified- Replacement Checks ! Specifically, there may be a possibility for unscrupulous individuals to perpetrate fraud through the use of "replacement checks". In that case, it is our belief that, since the Bank of First Deposit is compelled (now under the U.S. Patriot Act) to "know its customer", it should be liable.

D. Federal Reserve Board Additional Requests for Comment

15. Our credit union agrees with the Board's proposal to address specific examples of "generally applicable industry standards" in the commentary as opposed to the text of Regulation CC, especially given the lengthy, challenging text of Regulation CC as it currently exists.

16. While additional explanation may ultimately be needed or justified, we believe it may be best to let Check 21 experience a "seasoning period" before the Board provides additional examples or explanation to clarify the interaction between the rights and remedies conferred by Check 21 and those conferred by other law, particularly the U.C.C.

17. Our credit union believes that the Board should incorporate the recent revision of the U.C.C. relating to "remotely-created" consumer items into Regulation CC because depository banks should warrant all remotely created items.

Closure

We at Coastal federal Credit Union, Raleigh, N.C. appreciate the opportunity to comment on this critical proposal. Should you have any questions about any aspect of our constructive comment on this proposal, please contact me at (919-420-8251) or Mr. Carlton H. Howard, III, V.P., Marketing/Product Development/ADS (919-420-8253).

Respectfully submitted,

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